

## DEPARTMENT OF STATE REVENUE

### AUDIT-GRAM NUMBER IR-015

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### ISSUE

#### **Public Transportation – Qualifying for the Exemption.**

**Authority:** IC 6-2.5-5-27; 45 IAC 2.2-5-61, 62, 63; Info. Bull. No. 12, Aug. 1991; *National Serv-All, Inc.*, Ind. Tax Court (1994); *Indiana Waste Syst.*, Ind. Tax Court (1994); *Panhandle Eastern Pipeline*, Ind. Tax Court (2001)

#### **IC 6-2.5-5-27 Transactions involving tangible personal property - Use in providing public transportation.**

[P]roperty and services are exempt from state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

[1980]

#### **45 IAC 2.2-5-61 Public transportation; acquisitions.**

(b) [P]ublic transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration ...

[1987]

### I. GENERAL STATEMENT

The purchase or rental of tangible personal property is exempt from Sales Tax provided the purchaser is both predominantly engaged in the business of providing public transportation, and such property is itself both predominantly and directly used by the purchaser in the business of public transportation.

The Indiana Tax Court in its January 3, 2001 decision in *Panhandle Eastern Pipeline Company* has set out a two-pronged test to determine if a particular business qualifies for the public transportation exemption. Both prongs must be satisfied for the taxpayer to qualify for the public transportation exemption.

## II. PUBLIC TRANSPORTATION – THE “TWO-PRONGED TEST”

Tangible personal property is exempt from Sales Tax if the following two tests, applied consecutively, are met.

### A. The First Prong – The Predominant Business Test.

If the ratio of the annual sum of public transportation operating income exceeds 50% of the annual sum of all operating income, that person is deemed to be predominantly engaged in the business of public transportation.

### B. The Second Prong – The Predominant Use Test.

1. If after having satisfied the first test, property is determined to be exclusively and directly used in providing public transportation, it is exempt from Sales Tax.

2. If after having satisfied the first test, property is determined to be both directly used in providing public transportation and also used in other activities, the exemption from Sales Tax will be determined as follows:

- a) determine the time the property is directly used in a productive activity,
- b) determine the time the property is directly used in both productive and nonproductive activities,
- c) calculate a percentage determined by the quotient of a) divided by b),
- d) if the percentage exceeds 50%, the property is entirely exempt,
- e) if the percentage is 50% or less, the property is entirely taxable.

At the time of purchasing property, it is often difficult to determine a reasonable percentage of time to be spent in productive and nonproductive activities. If a reasonable percentage cannot be determined at the time of purchase, the purchase will be taxable. A refund may be claimed if the time spent in a productive activity is determined to be predominant, based on experience. A percentage determined from prior experience with similar property engaged in similar activities will be considered reasonable.

## III. DEFINITIONS

The following definitions are composed for purposes of this document only.

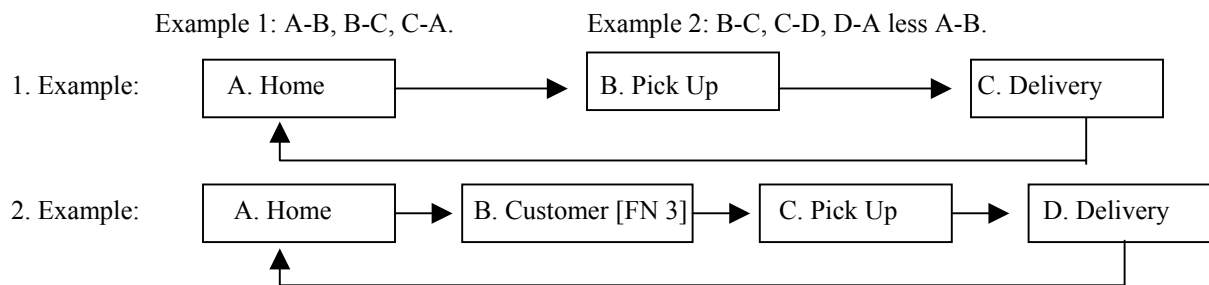
A. Public Transportation – The term means the activity of transporting persons or property for consideration.

B. Property – The word means tangible personal property either owned or leased unless the word is immediately preceded by the word “real”.

C. Predominant; Predominantly – The words describe an activity that occurs more than fifty percent (50%) of the time. [FN 1]

D. Directly Used – Property is “directly used” if its use is reasonably necessary in the activity of providing public transportation. [FN 2]

E. Productive Activity – The term describes a public transportation activity and includes both the time required to reach the location where a productive activity begins and the time required to return to a location where property is again available for a productive activity. Examples of productive activity are illustrated as follows:



F. Operating Income – The term means gross receipts from business operations but does not include dividends, interest, rents, royalties, capital gain or loss, or other receipts not directly attributable to business operations. The amount of “operating income” generally equals that amount of gross receipts less returns and allowances reported on the Federal Income Tax return. [FN 4]

G. Public Transportation Operating Income – The term means gross receipts earned from a public transportation productive activity.

H. Time – The word includes any convenient unit, which will reasonably measure an activity or the relationship of dissimilar activities. The term includes measures of, distance, volume, [FN 5] weight, revenue, [FN 6] or periods of time. [FN 7] The term does not include maintenance time, or any similar unproductive time during which the property is not available for productive activity. “Time” is usually measured over an annual period or over the useful life of a operating asset.

#### IV. EXCERPT FROM RELEVANT COURT DECISION

**Panhandle Eastern Pipeline Company  
and Trunkline Gas Company  
v.  
Indiana Department of State Revenue [FN 8]**

Indiana Tax Court, January 3, 2001

#### FACTS AND PROCEDURAL HISTORY

Panhandle...owns a gas pipeline system that runs through Indiana... (and)... mainly transported gas that belonged to various third parties...

...

[T]he Department... prorated the exemption... to reflect the actual percentage of gas publicly transported for third parties. See footnote

## ANALYSIS AND OPINION

### Discussion

...

The court finds that the public transportation exemption provided by section 6-2.5-5-27 is an all-or-nothing exemption. If a taxpayer acquires ... property for predominant use in providing public transportation for third parties, then it is entitled to the exemption. [FN 9] If a taxpayer is not predominantly engaged in transporting the property of another, it is not entitled to the exemption. [FN 10]

### CONCLUSION

[T]he court finds that Panhandle is entitled to summary judgement in its favor.

Footnote: The percentages of third party gas transported by Panhandle were ... (each year exceeded 50%)

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[FN 1] As that word is defined in 45 IAC 2.2-4-13(e); 45 IAC 2.2-5-24(a)

[FN 2] 45 IAC 2.2-5-61(c); Sales Tax Information Bulletin 12, Aug. 1991; *US Air, Inc.*, Ind. S. Court, 1991.

[FN 3] Property owned by the carrier delivered to the carrier's customer.

[FN 4] Federal form 1120, 1065, and 1120S, line 1c. Federal form 1040, Schedule C, Part I, line 3.

[FN 5] *Panhandle Eastern Pipeline*, Ind. Tax Ct. (2001) at Footnote 4. "[P]ercentages of third-party gas ..."

[FN 6] *Panhandle Eastern* quoting *Calcar Quarries*, Ind. App, (1979) "[C]rushed stone sales." Also *Indiana Waste Systems of Indiana, Inc.* Ind. Tax Court, 1994. "[P]ercent of its income ...". Also 25 IR 1754.

[FN 7] *Waste Systems* at Footnote 4 "[E]ven viewing predominant use in terms of time or volume ..."

[FN 8] Request for transfer to the Indiana Supreme Court denied June 20, 2001, without opinion.

[FN 9] The Department's interpretation: The "second prong" of the public transportation test.

[FN 10] The Department's interpretation: The "first prong" of the public transportation test.